Chang, Lisa

From: Chang, Lisa
Sent: Friday, August 14, 2015 12:28 PM
To: Bonifaci, Angela
Subject: RE: Please review: Comments to Swinomish via NWIFC

Thanks, I will send them along.

From: Bonifaci, Angela
Sent: Friday, August 14, 2015 12:25 PM
To: Chang, Lisa
Subject: Re: Please review: Comments to Swinomish via NWIFC

Lisa - these comments and suggested edits look great.

Fingers crossed!

Angela

From: Chang, Lisa
Sent: Friday, August 14, 2015 10:51 AM
To: Bonifaci, Angela
Subject: Please review: Comments to Swinomish via NWIFC

Hi Angela,

Here is a transmittal package to Tiffany for passing on to Larry. Since Larry said that he does NOT want ECY to weigh in on this at all (he does NOT want us to run this by ECY's listing/impairment folks, as Dan wanted us to do), I am including most of Jill's input in the cover letter.

Also, since we are not going out to ECY for feedback, I think that all our feedback is contained in this package, and we don't need 1-2 more weeks. I think that what we DO need is another call with Larry to walk him through our comments and the basis for our comments. I tried to stay strictly to the substantive issues that Dan, ORC, WRU, NPU, and we had. But there are a lot of things that were wrong with the language Swinomish had.

What do you think?

L

Hi Tiffany,

Here are EPA comments on the draft website (including the draft letter to legislators) produced under the Swinomish subaward. It would be helpful to have a call with Larry to walk through the basis for our comments.

We want to emphasize the importance of documenting the technical basis for assertions made in this website. The Ecology report being cited is 13 to 15 years old (published in 2002, likely data from 2000). Those 305(b) reports are now

wrapped up into the Integrated Report that the state submits. These are updated every two years to reflect new data assessment. While the trends may still be similar, it is questionable to cite a data analysis assessment that has been replaced many times over by an updated version, the most recently approved by EPA in 2012. We realize that the data search tool on Ecology's website does not present current information in a narrative like the 2002 report, but for the website to be consistent with current State data, the Ecology data search tool should be the source of used.

We also think it is not supportable to say that agriculture is responsible for 30% of pollution. That number is coming from Table 2 on pg 5 of the 2002 report, a table called "POSSIBLE Pollution Sources of Impairment of Assessed Waters." The impaired waters listing does not determine source attribution. That happens during a TMDL assessment. The conclusions in that table are based on best professional judgement of Ecology staff, likely determined by land use activities surrounding the impaired segments, and may be reasonable, but should not be presented as fact. For example, there have been many cases, most recently in the Skagit, where water quality impairment for bacteria was assumed to be strictly agriculture. However, Microbial Source Tracking determined that while agriculture was a contributor, dogs, birds and septic systems were also to blame.

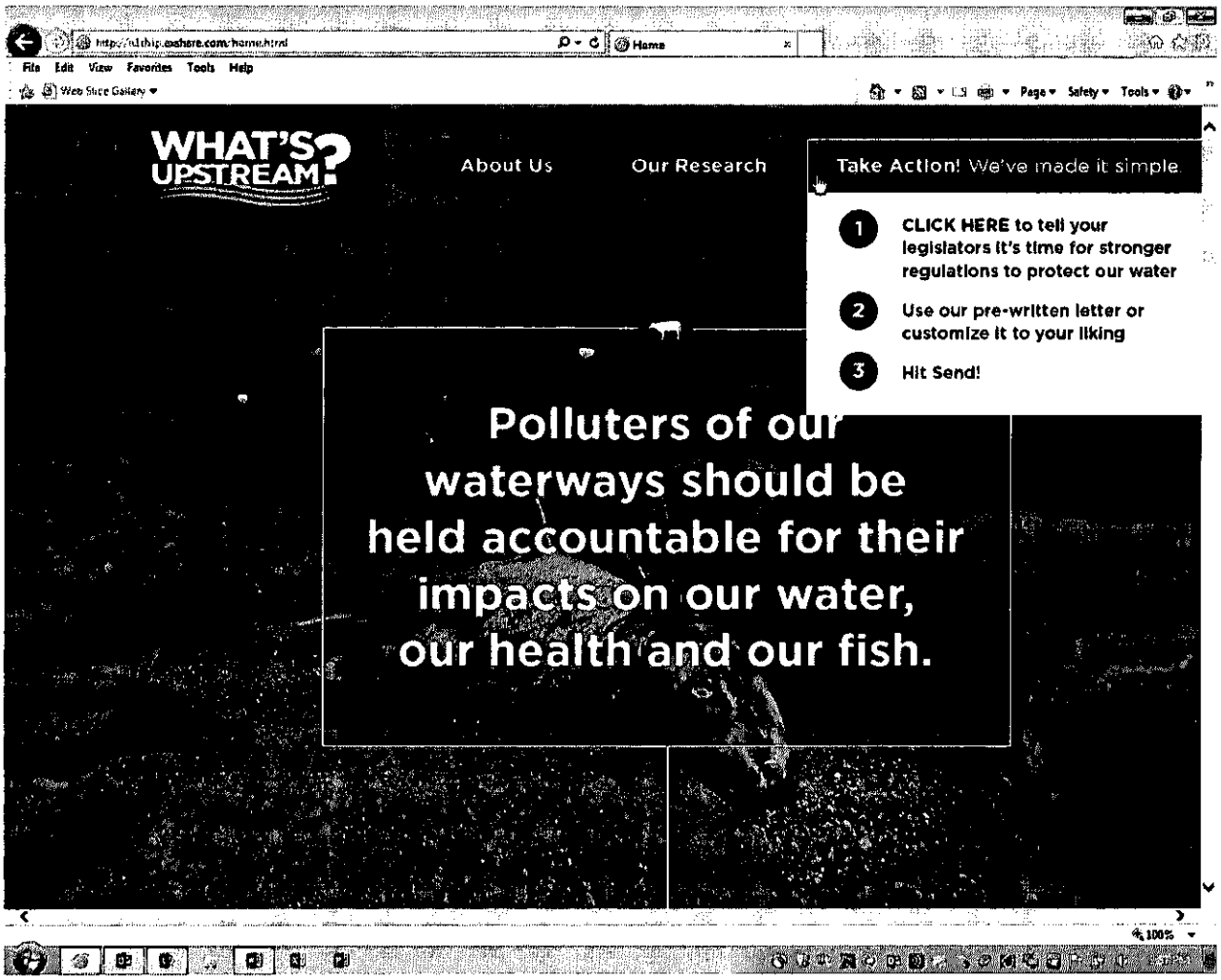
The subawardee may find that current data yield similar conclusions, but it is the current data that should be referenced, not outdated data. And again, they must be careful about making it sound like that data shows agriculture is a definitive cause, because that is not how the listings should be used, and that is not what they represent (definitive causes are determined during the TMDL assessment). The subawardee could instead say something like "XX percent of impairments are due to pollutants commonly associated with agriculture."

Please review all of our additional comments on the attachments. Thank you and Larry for working with us on this.

Lisa

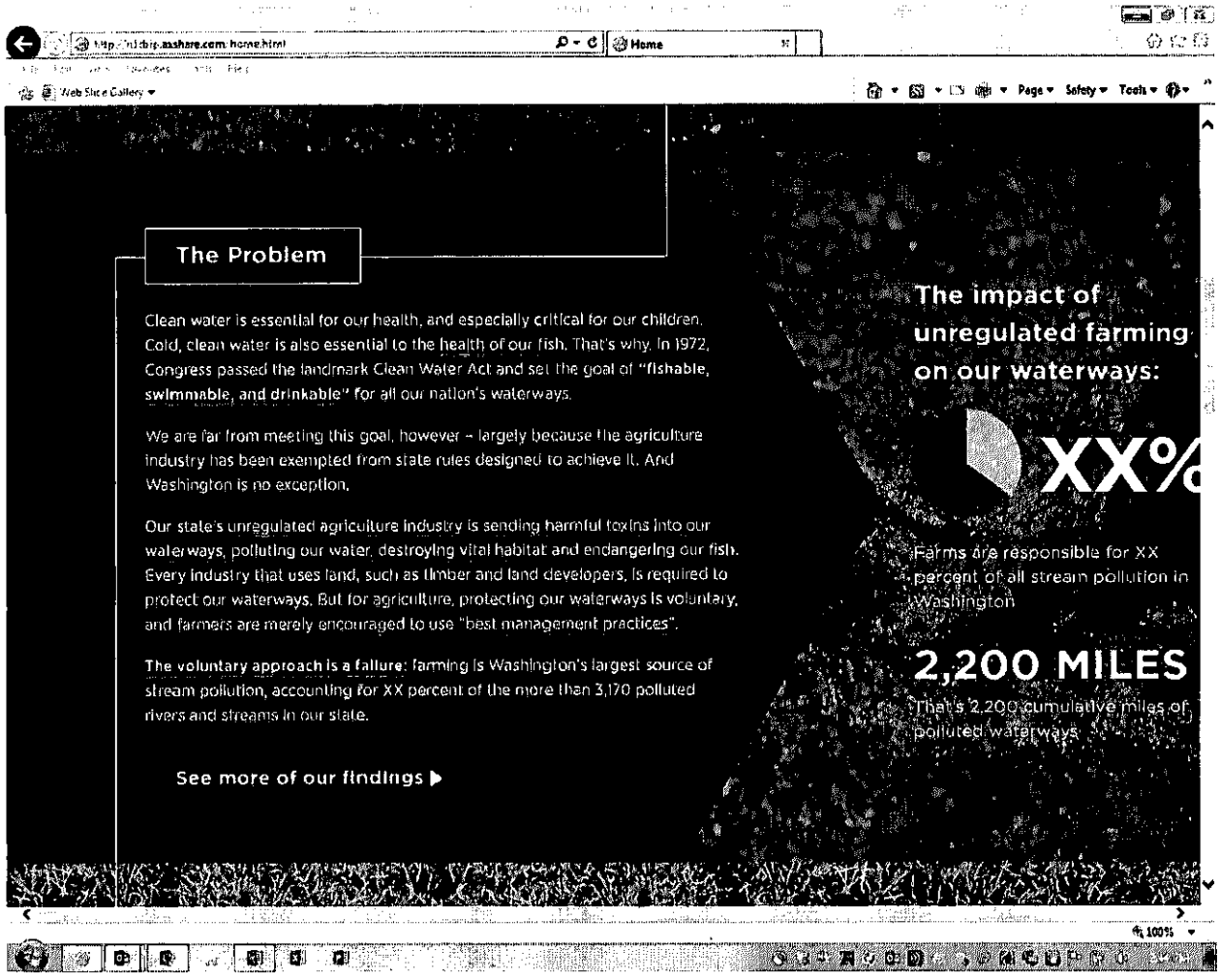
EPA 8/14/15 comments on Swinomish subaward draft website, http://n1dxip.axshare.com/#p=home

Page 1



Possible changes:

1. Edit text next to red number 1 as follows: "CLICK HERE to tell your legislators it's time for stronger ~~regulations to~~ protection of our water"
2. Suggested edit to box: "All ~~polluters~~ of us should be held accountable for our ~~their~~ impacts on ~~our~~ Washington's water, ~~our~~ health, and ~~our~~ fish."



Suggested edits:

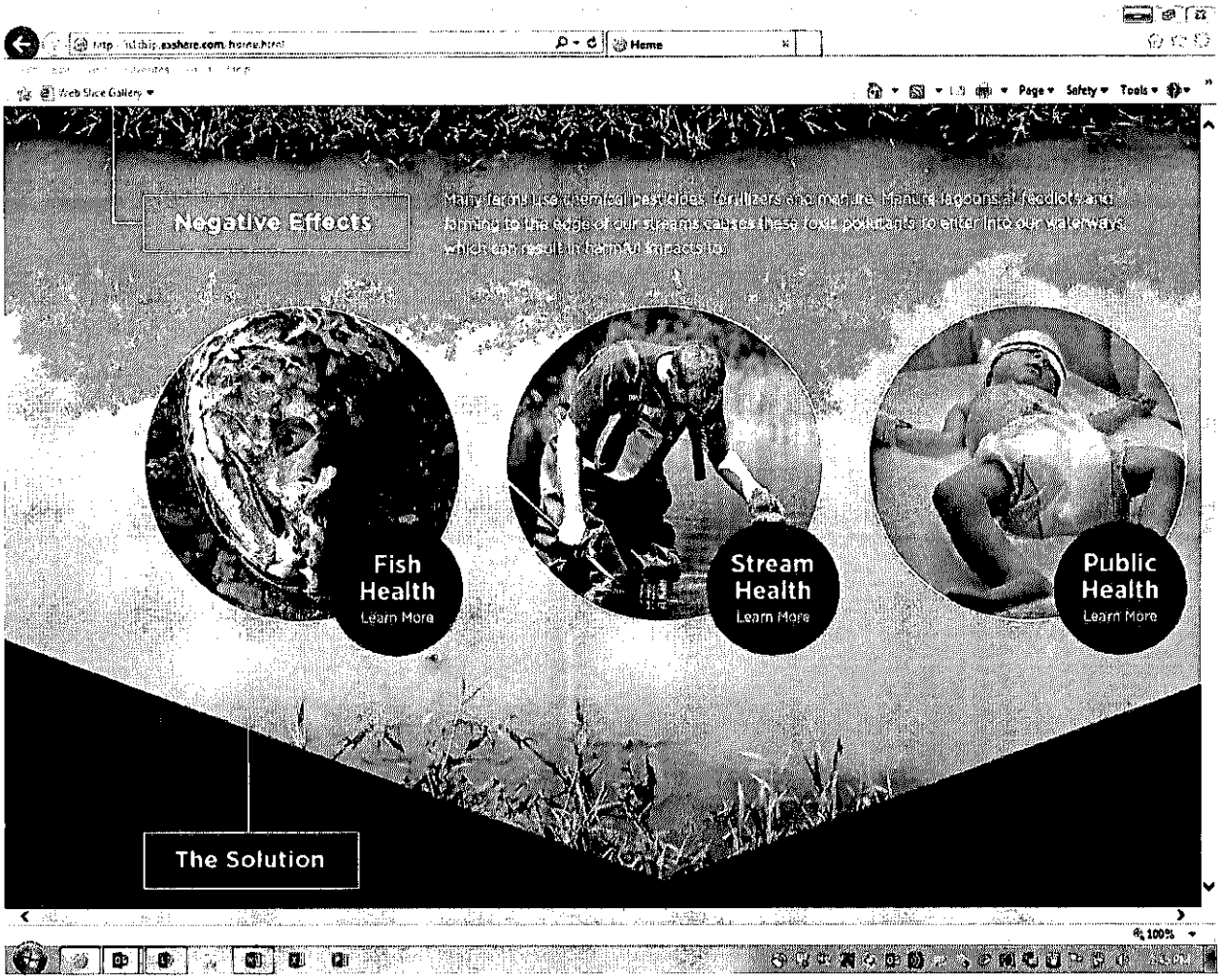
1. Revise the second paragraph to provide context (if desired, this can be done with an updated version of Larry's chart (which was based on data in Table 2 on p. 5 in ECY's 2001 report, https://fortress.wa.gov/ecy/publications/summarypages/0110015.html).

   The text can read something like "Yet thousands of stream miles in Washington fail to meet this goal and remain impaired from sources including agriculture, stormwater runoff, and septic tanks. We are far from meeting this goal~~, however – largely~~ in part because water quality permitting requirements do not apply to "non-point" sources of water pollution, which can include agricultural pollution." ~~the agriculture industry has been exempted from state rules designed to achieve it. And Washington is no exception~~."

   Note: The citation for the permitting requirement statement is 40 CFR 122.3, https://www.law.cornell.edu/cfr/text/40/122.3. Also, the "thousands" value in the preceding suggested text shouldn't be used unless you can verify with current information the impaired stream mile values on the website.

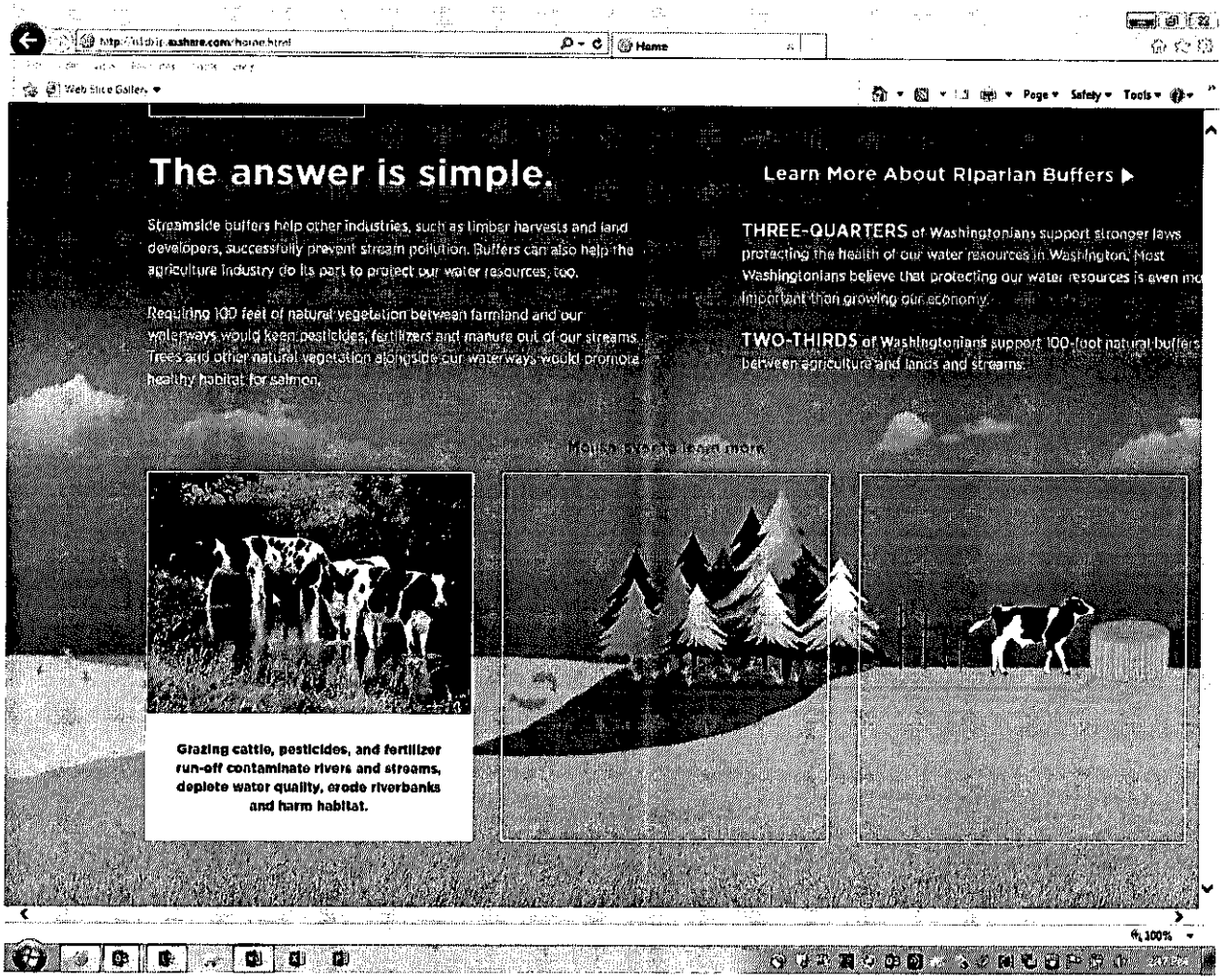
1. Third paragraph, "~~Our state's unregulated agriculture industry~~ Certain unregulated agricultural practices ~~is~~ send~~ing~~ harmful ~~toxins~~ pollutants into our waterways, ~~polluting~~ degrading our water, destroying vital habitat and endangering our fish. ~~Every industry~~ Other industries that uses land, such as timber and land developers, ~~is required~~ operate under requirements to protect our waterways. But for agriculture, protecting our waterways from non-point source pollution is voluntary, and farmers are merely encouraged to use "best management practices" (or "...protecting our waterways from non-point source pollution remains ~~is~~ voluntary, with a minority [ARE THERE DATA ON THESE NUMBERS] who have implemented adequately protective practices ~~and farmers are merely encouraged to use~~.").
2. The assertions in the following statements must be clearly supported by a credible, current technical source:
    a. "**The voluntary approach alone is not getting the job done ~~is a failure~~:** Despite years of effort by a progressive few, farming ~~is~~ remains Washington's largest source of stream pollution, accounting for XX percent of the more than 3,170 polluted rivers and streams in our state."
    b. "Farms are responsible for XX percent of all stream pollution in Washington. 2,200 MILES. That's 2,200 cumulative miles of polluted waterways."

Page 3



Suggested edits:

1. "Many farms use chemical pesticides, fertilizers and manure. Manure lagoons at feedlots and farming to the edge of our streams causes these ~~toxic~~ pollutants to enter into our waterways, which can result in harmful impacts to..."

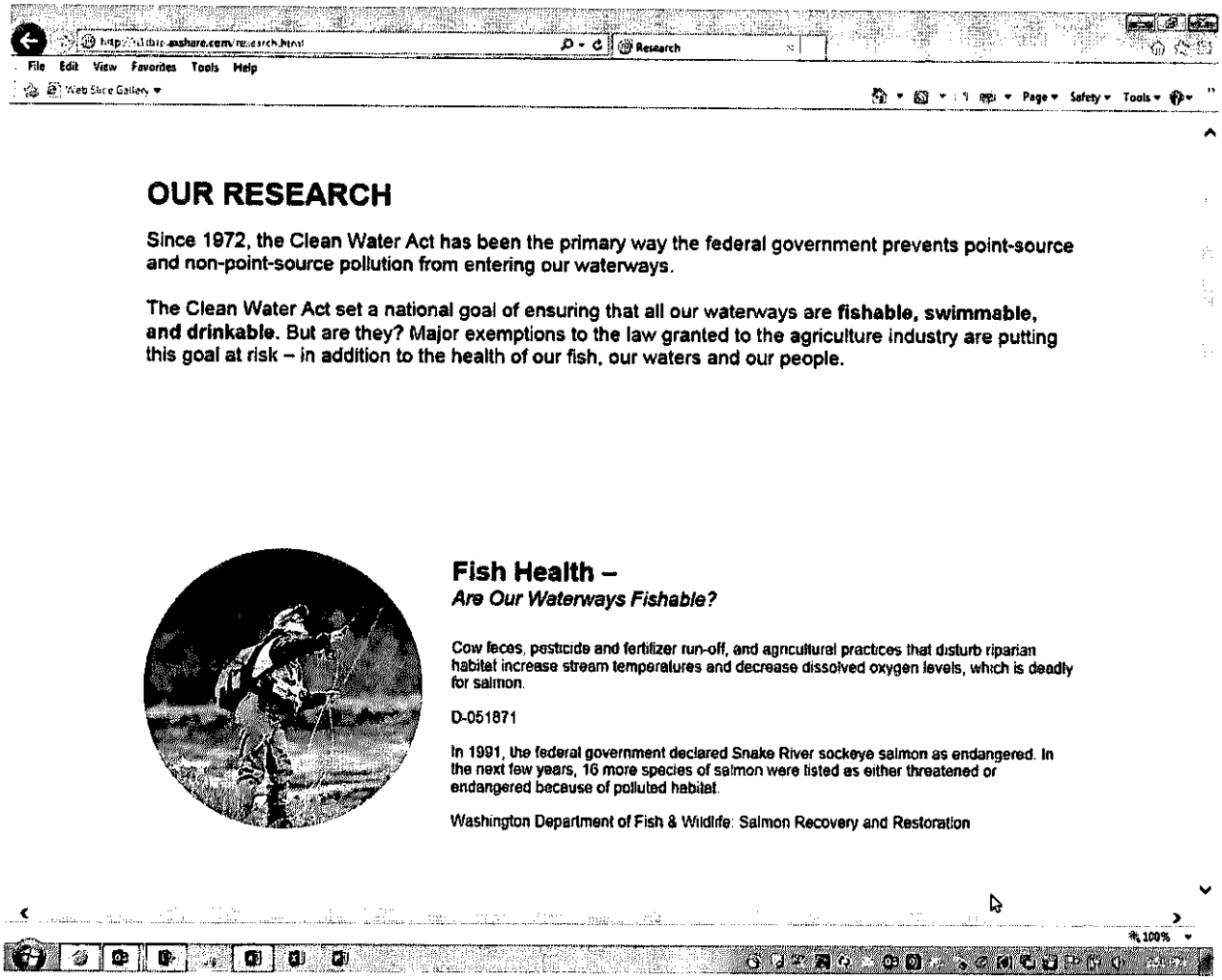


Possible changes.

1. Header, "The answer is simple." As in the letter, change to something like "A key tool is streamside buffers."
2. First paragraph. "...~~successfully prevent~~ dramatically reduce stream pollution." Citations to support this statement are needed.
3. Second paragraph. "~~Requiring 100~~ One hundred..."

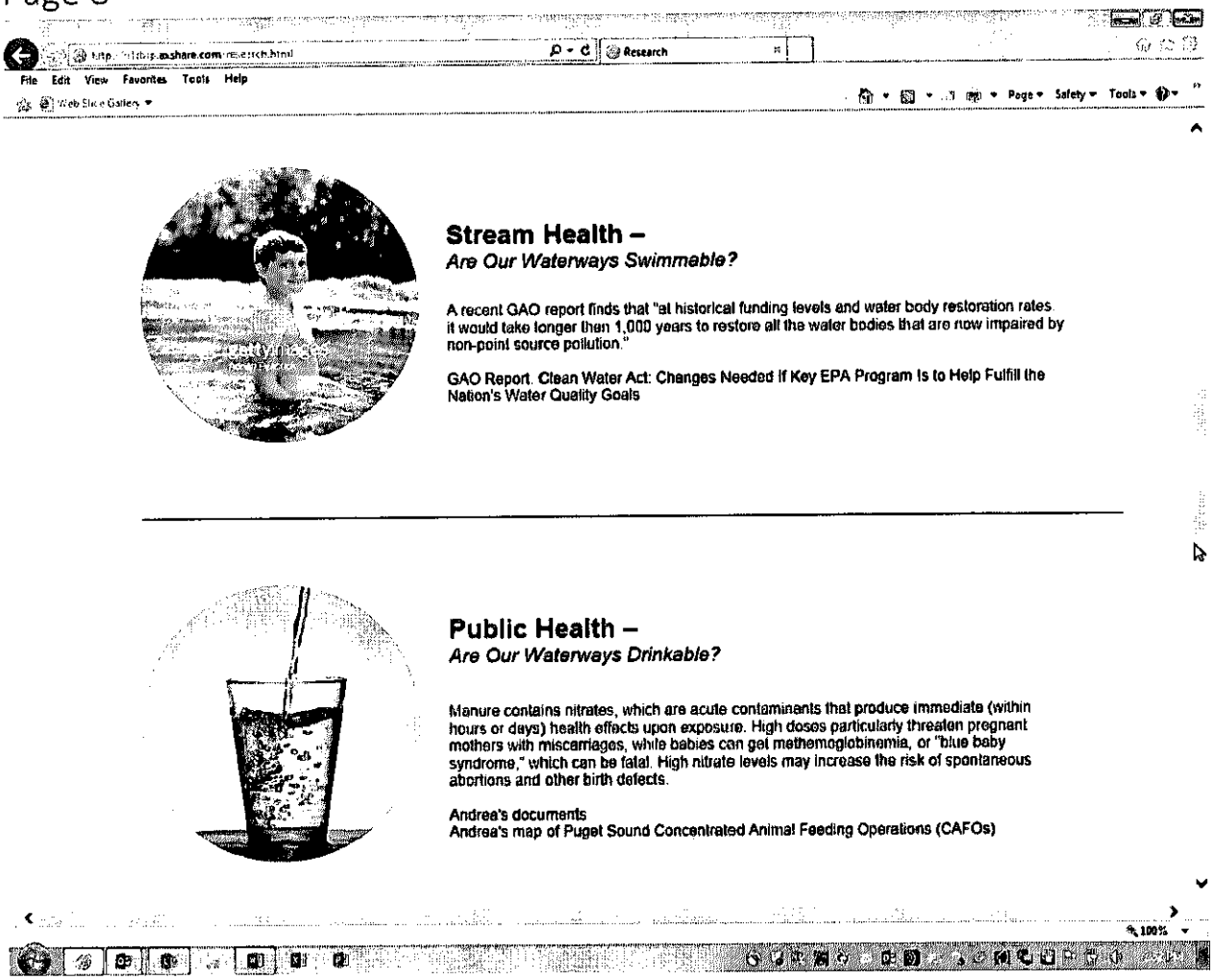
Possible changes:

1. "We need to ~~regulations that will~~ ensure...."
2. Under "About us," it is stated that "What's Upstream" is a project of the Tribe, CELP, EPA, PSP, WEC, and others. Have all these entities been given the opportunity to review and participate in the development of this content? Are all of them aware that this website is being presented as a joint project? This is an important point. All entities listed here should clearly agree to be listed as partners and agree with the content of this website. What process will be used to obtain and document their concurrence?



Questions/possible changes:

1. Under "Our Research:" Replace "Major exemptions to the law granted to the agriculture industry are putting..." with "Many of the nation's waters remain impaired due to agricultural non-point source pollution, which is not subject to federal water quality permitting requirements, putting..."
2. Under "Fish Health" – again, need context. Add sentence to beginning of first paragraph that says something like "Many sources lead to pollution impairments of Washington's waterways, including agriculture, stormwater runoff, septic tanks, and municipal point sources. With respect to agricultural sources, animal manure ~~Cow feces~~..."



Stream Health –
Are Our Waterways Swimmable?

A recent GAO report finds that "at historical funding levels and water body restoration rates it would take longer than 1,000 years to restore all the water bodies that are now impaired by non-point source pollution."

GAO Report. Clean Water Act: Changes Needed If Key EPA Program Is to Help Fulfill the Nation's Water Quality Goals

Public Health –
Are Our Waterways Drinkable?

Manure contains nitrates, which are acute contaminants that produce immediate (within hours or days) health effects upon exposure. High doses particularly threaten pregnant mothers with miscarriages, while babies can get methemoglobinemia, or "blue baby syndrome," which can be fatal. High nitrate levels may increase the risk of spontaneous abortions and other birth defects.

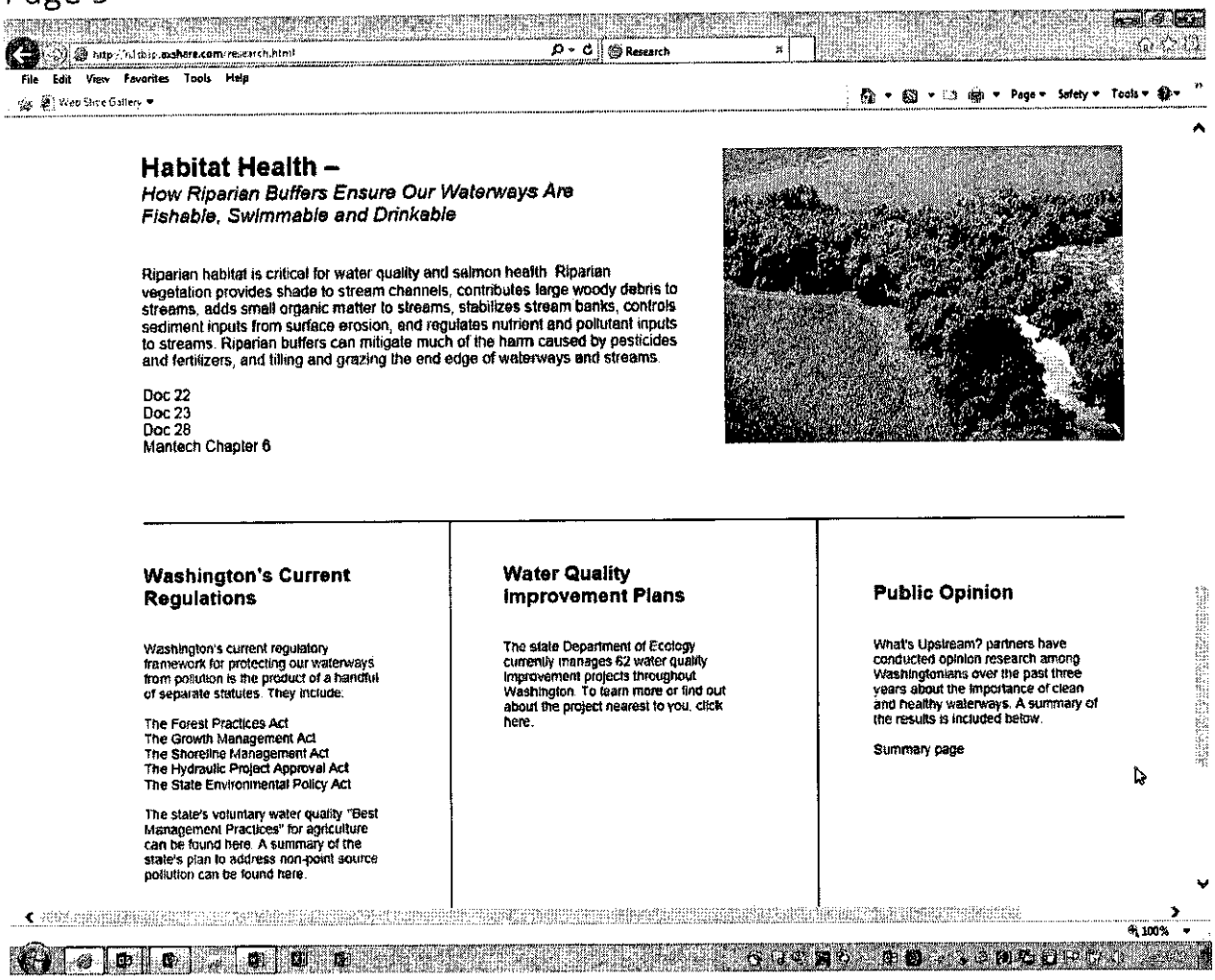
Andrea's documents
Andrea's map of Puget Sound Concentrated Animal Feeding Operations (CAFOs)

Issues/possible changes:

1. Under "Stream Health" – if the issue is "swimmable," not all non-point source pollution is bacterial. Add a sentence, "Many of these impaired waters exceed federal and state human health guidelines for recreational use of waters." And this statement will need a citation.
2. Under "Public Health" – don't the issues cited in this section pertain mainly to subsurface (groundwater/shallow groundwater)? Is there a pattern of nitrate concentrations in rivers and streams in WA that exceed the nitrate MCL? Is it appropriate to be highlighting these issues in a section on "waterways"?

   If not, suggest editing the paragraph to say something like "Again, many sources lead to pollution impairments of Washington's waterways. With respect to agricultural sources, if improperly stored or used, animal waste has the potential to contribute pollutants such as nutrients (e.g., nitrate, phosphorous), organic matter, sediments, pathogens (e.g., giardia, cryptosporidium), heavy metals, hormones, antibiotics and ammonia to the waters we use for drinking, swimming and fishing." (EPA website, accessed 8/12/15, http://www.epa.gov/region9/animalwaste/problem.html).

And then, add a second paragraph that says something like "High nitrate levels originating from excess agricultural fertilizer and manure are a serious concern with respect to groundwater in certain parts of the State. Nitrates...[then continue with rest of paragraph, which should include citations]."



Comments:

1. Please confirm with ECY the following:
    a. Under Habitat Health – do these documents represent BAS in WA on riparian buffers?
    b. Under "Washington's Current Regulations – does this section, including the citations, accurately reflect WA's "current regulatory framework for protecting our waterways from pollution"?
2. Have the public opinion research results and interpretation undergone technical review by some knowledgeable external entity? In EPA comments on the FY12 workplan, we stated that "technical review is very relevant to this project" including the public opinion research work. In the subawardee's response to this comment, a commitment was made "to develop a more formalized technical review of the project." What were the results of the review of the public opinion research design, execution, and interpretation of results? It will be important for the research to be able to stand up to scrutiny by entities who are interested in this website and the information presented.

Draft letter to elected officials

Everyone knows that clean water is essential for our health, and is especially critical for our children. Cold, clean water is also essential to the health of our fish and shellfish.

But what's far less well-known is that ~~many~~ some farming practices commonly used in our state send potentially harmful ~~toxins~~ pollutants into our waterways, degrading ~~polluting~~ our water, threatening public health, destroying vital habitat and endangering our fish and shellfish.

Farming right to the edge of our streams allows pesticides, fertilizers, and land-applied manure to enter into our waterways, and is Washington's largest source of stream pollution. These practices are responsible for nearly a third of the polluted rivers and streams in our state.

Commented [CL1]: Please document basis for these statements.

Unfortunately, in many cases state water quality permitting requirements do not apply to these types of "non-point" sources of water pollution. ~~Washington's agriculture industry has been exempted from most state permitting requirements to control these types of water pollution.~~ Although ~~f~~Farmers are encouraged to use voluntary best practices, ~~but~~ there has been limited use of these voluntary measures to date and agricultural sources continue to impair many waters and threaten recovery of ~~have not resulted in meeting federal or state pollution standards or recovering~~ salmon populations.

It is time to recognize that voluntary approaches have not been sufficient. Too many of our streams are polluted by agricultural ~~practices~~sources that do not reflect best practices to reduce water pollution. When public opinion research shows that three-quarters of Washingtonians support stronger laws protecting the health of our water resources in Washington, and most Washingtonians believe that protecting our water resources is even more important than growing our economy, it is time to recognize that ~~voluntary approaches alone are not working~~ the public is ready to prioritize strong water resource protection.

One effective solution is ~~mandatory~~ streamside buffers. Other industries that work with the land, such as timber harvesters and developers, are required to use streamside buffers to prevent stream pollution. Adequate buffers can help the agriculture industry do its part to protect our water resources, too. The science is overwhelming: 100 feet of natural vegetation between farmland and our waterways would keep most pesticides, fertilizers, cows and manure out of our streams, and it would promote healthy habitat for our fish.

Commented [CL2]: Please document basis for this statement.

This issue has received little attention from the Legislature to date, but should. Fully two-thirds of Washingtonians support 100-foot natural buffers between agriculture lands and streams.

It's time to clean up our streams, for healthy fish, healthy farms and healthy families. I hope you can commit to examining this issue further, including the extent of the problem and effectiveness of streamside buffers as a solution. Holding ~~the agricultural~~all industries to the same responsibility ~~as other industries~~for addressing non-point source pollution will help keep our rivers fishable, swimmable and drinkable for years to come.

Sincerely,

KUOW underwriting advertisement copy

Support for KUOW comes from What's Upstream dot com, a coalition of Washington clean water advocates working to protect salmon rivers and streams by addressing agricultural pollution as the major cause of pollution in salmon bearing streams. Clean water in Puget Sound starts with clean water upstream. More at What's upstream dot com.

Commented [CL3]: Please document basis for this statement.